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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/558,382

11/29/2005

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4175

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EXAMINER

SACKEY, EBENEZER O

ART UNIT

PAPER NUMBER

1624

MAIL DATE

DELIVERY MODE

04/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/558,382	Applicant(s) KANOU ET AL.	
	Examiner EBENEZER SACKEY	Art Unit 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/29/05; 12/28/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

Claims 1-13 are pending.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Information Disclosure Statement

Receipt of the Information Disclosure Statement filed on 11/29/05 and 12/28/07 respectively is acknowledged and has been entered into the file. Signed copies of the 1449 are attached herewith.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al., (U.S. Patent Number 6,602,970) in view of Arlt et al., (U.S. Patent Number 4,986,884).

Applicants claim a method for producing purified 2-cyanoacrylate by distilling crude 2-cyanocarylate in the presence of a polymerizing inhibitor, wherein the polymerizing inhibitor has a boiling point within $\pm 12^{\circ}\text{C}$ of the purified cyanoacrylate.

Determination of the scope and content of the prior art (MPEP §2141.01)

Ando et al., teach that using anionic polymerizing inhibitors such as BF_3 /methanol complex inhibit deterioration of 2-cyanoacrylate. See the entire reference especially column 7, lines 10-55.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the current method and Ando is that Ando is silent on how the cyanoacrylate is purified. However, Arlt et al., teach that distillation is one way of purifying 2-cyanoacrylate. See column 1, lines 12-18.

It is noted that claim 9 is drawn to a specific ratio of inhibitor to crude 2-cyanoacrylate. This limitation is not disclosed by any of the references. However, such is not considered an inventive step barring a showing of the criticality of the ratio. Note that the inhibitor is continuously poured into the distillation column (claim 1, lines 11-12) and the use of hydroquinone inhibitor (column 2, lines 39-51 respectively of Arlt et al.). It should be noted that distillation *per se* is uninventive since it is a common practice in organic chemistry to purify products.

Finding of prima facie obviousness---rational and motivation (MPEP §2142-2143)

Accordingly, at the time of filing this application, the claimed process could be considered as no more than a selective teaching performed in an obvious manner to one of ordinary skill, since each step of the process appears to be relatively complete in itself and there is no indication of an interaction between steps that could lead the skilled artisan to doubt that a substitution of an art recognized alternative step could be made. See *In re Mostovych*, 144 USPQ 38 (1964). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to distill crude cyanoacrylate in the presence of an inhibitor, because Arlt et al., teach that the

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preparation of cyanoacrylate can be done with inhibitors such as hydroquinone, absent a showing of unexpected results or properties especially since only the expected compound is obtained. As such, one of ordinary skill in the art would be motivated to optimize the process parameters such as distillation (as is done herein) to improve yield and selectivity. A prima facie case of obviousness is established when the teaching from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ 2d 1529, 1531 (Fed. Cir.1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone number is (571) 272-0704.

The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

EOS

**/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624**